GUIDELINES ON ACCESSIBLE EDUCATION

ONTARIO
HUMAN RIGHTS
COMMISSION

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PLEASE NOTE

These Guidelines contain the Commission's interpretation of provisions of the Ontario *Human Rights Code* relating to discrimination against students because of disability. They are subject to decisions of the Superior Courts interpreting the *Human Rights Code*. Any questions regarding these Guidelines should be directed to the staff of the Ontario Human Rights Commission.

Commission policies and guidelines set standards for how individuals, employers, service providers and policy makers should act to ensure compliance with the *Code*. They are important because they represent the Commission's interpretation of the *Code* at the time of publication. While they are not binding on the human rights tribunal or on courts, they are often given great deference[1] applied to the facts of the case before the court or tribunal, and quoted in the decisions of these bodies.

[1] In *Quesnel v. London Educational Health Centre* (1995), 28 C.H.R.R. D/474 (Ont. Bd. Inq.), the board of inquiry applied the United States Supreme Court's decision in *Griggs v. Duke Power Co.*, 401 U.S. 424 (4th Cir. 1971) to conclude that Commission policy statements should be given "great deference" if they are consistent with *Code* values and formed in a way that is consistent with the legislative history of the *Code* itself. This latter requirement was interpreted to mean that they were formed through a process of public consultation.

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INTRODUCTION

In October 2003, the Ontario Human Rights Commission (the "Commission") released its consultation report entitled *The Opportunity to Succeed: Achieving Barrier-free Education for Students with Disabilities* ("*The Opportunity to Succeed*"). The Report was the product of the Commission's research and consultation with a wide array of interested parties during the fall of 2002 on human rights issues affecting students with disabilities.

Feedback received throughout the consultation indicated that, while there is a highly regulated and complex educational framework in place to address the needs of students, and while in many cases education providers are doing much to meet the diverse needs of the student population, a significant number of students with disabilities continue to face obstacles in their attempts to access educational services in Ontario. *The Opportunity to Succeed* identified key barriers at the primary, secondary and post-secondary levels of education. These barriers include: inadequate funding, physical inaccessibility, cumbersome and time-consuming accommodation processes, negative attitudes and stereotypes, and a lack of understanding of Commission policy and the rights and responsibilities of all parties under the Ontario *Human Rights Code (the "Code")*.

The Report outlined actions required by schools and school boards, post-secondary institutions, government and other responsible parties to promote compliance with human rights law and policy. It defined the responsibilities of students and/or their parent(s) and guardian(s) as participants in the accommodation process. In addition, it set out the Commission's own commitments to take steps to ensure that students with disabilities have equal access to educational services. In this regard, the Commission has committed to monitoring progress with the recommended actions required by the Report and will follow up with education providers to assess levels of compliance. The Commission also committed to developing *Guidelines on Accessible Education* (the "Guidelines") to help parties better understand their obligations in the education of students with disabilities.

While the Guidelines are a companion piece to *The Opportunity to Succeed*, each document serves a distinct purpose. Whereas *The Opportunity to Succeed* reported the feedback received by the Commission during its education consultation and recommended specific actions for the parties involved in order to address systemic issues in educational services, the Guidelines take key principles from the Commission's *Policy and Guidelines on Disability and the Duty to Accommodate* ("*Disability Policy*")[2] and apply them to the educational context. They are intended to provide guidance to support education providers[3] and students with disabilities in the fulfilment of their duties and rights under the *Code*.

[2] Ontario Human Rights Commission, *Policy and Guidelines on Disability and the Duty to Accommodate*, (March 2001), available online at Commission's website: www.ohrc.on.ca.

[3] "Education providers" includes, but is not limited to, school boards, school staff, educators, post-secondary institutions, and where appropriate, government.

The Guidelines provide clarification with respect to the following areas:

- The principles of accommodation
- Creating a welcoming environment for all students
- The accommodation process
- The right to confidentiality and the disclosure of information
- Appropriate accommodation
- Accommodation planning
- The undue hardship standard
- Roles and responsibilities of those involved in the accommodation process

It should be noted that the Guidelines are not intended to provide prescriptive solutions for accommodating specific disabilities, as accommodation must always be based on an individualized assessment. Where appropriate, however, examples are provided which apply the principles outlined to situations involving students with specific types of disabilities.

For a full understanding of how the Commission approaches disability issues, the Guidelines should be read in conjunction with the Commission's *Disability Policy* and the consultation report, *The Opportunity to Succeed.*

By clearly setting out the Commission's interpretation of the responsibilities of all parties to the accommodation process, and by providing direction to these parties on how to best achieve compliance, it is hoped that the Guidelines will help to prevent discrimination, reduce disputes throughout the process, and where disputes continue to occur, provide strategies to help avoid their escalation.

Scope of Application

Education is a "service" under the *Code*

Section 1 of the *Code* guarantees the right to equal treatment in services, without discrimination on the ground of disability. Education, in its broadest sense, is a "service" within the meaning of the *Code.*[4] The scope of "educational services" will include the mastery of knowledge, academic standards, evaluation and accreditation. It may also encompass the development of a student's personality, talents, and mental and physical abilities to their fullest potential, and may include co-instructional activities such as school-related sports, arts and cultural activities, and school functions and field trips. At the lower grade levels, the service of education will typically be defined more broadly and may include the student's overall social, physical and academic development in the educational setting. At the higher levels of education, formal educational services will be defined more narrowly and will focus increasingly on academic standards and accreditation.

[4] *Peel Board of Education* v. *Ontario (Human Rights Commission)* (1990), 12 C.H.R.R. D/91 (Ont. S.C.)

Duty to accommodate disability

Once a disability-related need has been identified, or where a *prima facie* case of discrimination has been established, education providers have a duty to accommodate the needs of students with disabilities in order to allow them to access educational services equally, unless to do so would cause undue hardship.[5]

Applies to public and private educational institutions

The right to equal treatment and the duty to accommodate exist for publicly funded and privately funded early childhood pre-schools, elementary and secondary schools, colleges and universities. This includes special schools which exist in the province such as hospital schools, care and treatment programs, schools in correctional facilities, and provincial schools.[6] It would also include separate schools, French language schools, and trade, business and professional accreditation courses.

Defining disability

The definition of "disability" in the *Code* is broad.[7] It includes past, present and perceived conditions. When considering whether a student has been discriminated against because of disability, the focus may be on how the student was treated rather than on proving that he or she has physical limitations or an ailment.

What the Courts Say: The Supreme Court has established that a disability may be the result of a physical limitation, an ailment, a perceived limitation or a combination of all these factors. The focus is on the *effects* of the preference, exclusion, or other type of differential treatment experienced by the person and not on proof of physical limitations or the presence of an ailment. The Court has stated: "By placing the emphasis on human dignity, respect, and the right to equality rather than a simple biomedical condition, this approach recognizes that the attitudes of society and its members often contribute to the idea or perception of a "handicap". In fact, a person may have no limitations in everyday activities other than those created by prejudice and stereotypes."[8]

[5] See section 17 of the Ontario *Human Rights Code* (the "*Code*"), R.S.O. 1990, c.H-19. It should be noted that, in some situations, equality may require different treatment that does not offend an individual's dignity.

[6] Provincial schools are residential schools geared to students with specific exceptionalities, for example, students who are blind, deaf, deafened or hard of hearing.

[7] See section 10 of the *Code*, *supra*, note 5.

[8] *Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Montréal (City); Quebec (Commission des droits de la personne et des droits de la jeunesse) v. Boisbriand (City)*, ["*Mercier*"], 1 S.C.R. 665 at para. 77.

Protection for persons with disabilities under the *Code* explicitly includes physical disability, developmental disabilities and learning disabilities. Discrimination may be based as much on perceptions, myths and stereotypes, as on the existence of actual functional limitations.[9]

Forms of discrimination

Discrimination can take many forms. It can occur when an education provider adopts a rule that, on its face, discriminates against persons with disabilities.

> **Example:** As a condition of enrolment, a college requires deaf students to sign a waiver stating that the college is not responsible for providing or funding accommodations.

Discrimination can also take place through another person or other means.

> **Example:** A private school instructs an admissions scout not to recruit students with disabilities who have costly accommodation requirements. In this case, the person or persons giving the instructions are discriminating indirectly.

Education rules, policies, procedures, requirements, eligibility criteria or qualifications may appear neutral but may nonetheless amount to constructive, or "adverse effect" discrimination.

> **Example:** A university policy of awarding scholarships only to students in full-time attendance would likely have an adverse effect on students whose disabilities only permit them to attend school on a part-time basis.

Principles of Accommodation

Accommodation is a means of preventing and removing barriers that impede students with disabilities from participating fully in the educational environment in a way that is responsive to their own unique circumstances. The principle of accommodation involves three factors: dignity, individualization and inclusion[10].

[9] *Ibid.*, at para. 39.

[10] In *Eaton v. Brant County Board of Education*, [1997] 1 S.C.R. 241, the Supreme Court of Canada recognized that while specialized or segregated education may be appropriate where it is in a child's best interest, integration should be recognized as a norm of general application.

Respect for Dignity

Students with disabilities have the right to receive educational services in a manner that is respectful of their dignity. Human dignity encompasses individual self-respect and self-worth. It is concerned with physical and psychological integrity and empowerment. It is harmed when individuals are marginalized, stigmatized, ignored or devalued.

Education providers must fashion accommodation solutions in a manner that respects the dignity of students with disabilities.[11] Accommodations should be considered along a continuum from those that most respect a student's right to privacy, autonomy, and dignity, to those that least respect them. Accommodations that do not take into account a student's right to respectful and dignified treatment will not be appropriate.[12] Respect for dignity also includes taking into account how an accommodation is provided and the student's (and/or their parent(s)' or guardian(s)') own participation in the process.

Educators have a duty to maintain a positive school environment for all persons they serve.[13] Throughout the Commission's consultation, participants emphasized that the attitudes of educators towards disability issues play a major role in influencing how other students treat and relate to students with disabilities. Teachers should make efforts to sensitize students about disability issues and to model respectful attitudes and behaviour towards students with disabilities. Education providers need to address any behaviour that may be injurious to the dignity of students with disabilities.

Individualized Accommodation

There is no set formula for accommodation. Each student's needs are unique and must be considered afresh when an accommodation request is made. At all times, the emphasis must be on the individual student and not on the category of disability. Blanket approaches to accommodation that rely solely on categories, labels and generalizations are not acceptable.

Although many accommodations will benefit large numbers of students with similar needs, it must be kept in mind that an accommodation solution that meets one student's

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11 The Supreme Court of Canada has confirmed that dignity is a factor to be considered in determining disability accommodation in the education context. In commenting on its decision in *Eaton v. Brant County Board of Education*, the Court stated:

> ...Emily's claim might have succeeded if ...the Court had been persuaded that the Board's response to the challenge posed by Emily's placement [the accommodation] **had itself violated Emily's dignity as a human being equally deserving of consideration**, or placed discriminatory obstacles in the way of her self-fulfillment. [Emphasis added.]

Granovsky v. Canada (Minister of Employment and Immigration), [2000] 1 S.C.R. 703 at para. 74 making reference to *Eaton* decision, *ibid*.

12 The Supreme Court's decisions in *Law v. Canada (Minister of Employment and Immigration)*, [1999] 1 S.C.R. 497 and *Granovsky, ibid*, have confirmed that the concept of human dignity is central to discrimination analysis. These cases indicate that if an accommodation marginalizes, stigmatizes or demeans the person with a disability's sense of worth or dignity as a human being, it will not be appropriate.

13 *Ross v. New Brunswick School District No. 15*, [1996] 1 S.C.R. 825, 25 C.H.R.R. D/175.

requirements may not meet the needs of another. Two students with the same disability may have very different needs; for example, while some students with visual impairments read Braille, many do not. Different effects of a disability and different learning styles may call for different approaches.[14]

> **In Practice:** An appropriate accommodation for a student who is Deaf and whose primary language of communication is American Sign Language or Langue des signes québecoise might be a Provincial School for the Deaf or a sign language instructional program in a local community school. At the same time, an appropriate accommodation for another student, who is also profoundly deaf, and who primarily uses auditory-verbal communication, might be inclusion in a regular classroom.

Individualized assessment includes being aware of the ways in which students with disabilities are affected by also being members of other historically disadvantaged groups. These students may sometimes be subjected to discriminatory treatment that is based on more than one protected *Code* ground, *e.g.* race, sex, sexual orientation or ethnic origin. These grounds may "intersect" thus producing a unique experience of discrimination.[15]

> **In Practice:** An eight year-old boy with attention deficit hyperactivity disorder, whose family has recently immigrated to Ontario from Sri Lanka, registers at his neighbourhood public school. In order to ensure that the boy's parents are fully informed about the workings of the special education system and the resources available to students with disabilities, the school principal provides the family with written information about these services in Tamil, the family's first language.

> **In Practice:** A university organization providing support services to lesbian, gay, bisexual and transgendered students ensures that its literature is available in alternative formats so that it is accessible to students with visual disabilities.

Education providers must also ensure that testing and evaluation materials and procedures used to grade and place students with disabilities are not selected or implemented in a manner that is racially or culturally biased, or otherwise infringes the rights protected by the *Code*.

[14] In the *Eaton* decision, the Supreme Court of Canada recognized the unique nature of disability and emphasized the need for individualized accommodation because the ground of disability "means vastly different things depending upon the individual and the context", *Eaton*, *supra*, note 10 at para. 69.

[15] The Commission has explored this "contextualized" or "intersectional" approach to discrimination analysis at length in its Discussion Paper entitled *An Intersectional Approach to Discrimination: Addressing Multiple Grounds in Human Rights Claims* (2001), available online at the Commission's website: www.ohrc.on.ca.

Inclusion and Full Participation

As the Commission noted in its *Disability Policy* "in some circumstances, the best way to ensure the dignity of persons with disabilities may be to provide separate or specialized services."[16] However, education providers must first make efforts to build or adapt educational services to accommodate students with disabilities in a way that promotes their inclusion and full participation. Preventing and removing barriers means all students should be able to access their environment and face the same duties and requirements with dignity and without impediment.

Did You Know: Internationally, inclusion is recognized as an essential part of ensuring that students with disabilities have equal opportunities in school. In this regard, the United Nations Educational, Scientific, and Cultural Organization ("UNESCO") noted:

> Inclusion is to be seen as part of the wider struggle to overcome exclusive discourse and practices, and against the ideology that each individual is completely separate and independent. Inclusion is about the improving of schooling. Rather than being a marginal theme concerned how a relatively small group of pupils might be attached to mainstream schools, it lays the foundations for an approach that could lead to the transformation of the system itself.[17]

Other Jurisdictions: In the United States, the *Individuals with Disabilities Education Act* also recognizes the importance of including students with disabilities in the regular curriculum. The *Act* states:

> To the maximum extent appropriate, children with disabilities...are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.[18]

Education providers must take steps to include students with disabilities in classroom and extra-curricular activities, wherever possible. Education policies, programs, services and activities must be designed inclusively with the needs of all students in mind, so as not to exclude or single out any student. Education policies must take into account the diverse needs of the student population, and must plan for alternative measures to address the needs of students with disabilities.

[16] *Disability Policy, supra*, note 2 at Part 3.1.3.

[17] UNESCO, *Salamanca Five Years On: A Review of UNESCO Activities in the Light of The Salamanca Statement and Framework for Action on Special Needs Education* (1999) at p. 9

[18] *Individuals with Disabilities Education Act*, 20 U.S.C., ss. 612(a)(5)(A).

In Practice: Workplace tensions have culminated to the point where a labour strike by school staff appears imminent. Thinking ahead, the school board in question works together with school principals to draft a contingency plan for students that would permit them to continue attending school should there be a work stoppage. The plan includes specific provisions addressing the needs of students with disabilities, and includes a back-up plan in the event that educational assistants, special needs assistants and other special education staff are part of a walkout.

The following are steps education providers can take to provide students with disabilities with the greatest opportunity to participate fully in educational services:

STEP 1: Promoting Inclusive Design

In order to ensure that students with disabilities have equal access to education, academic facilities, programs, policies, and services must be structured and designed for inclusiveness. This means education providers have an obligation to be aware of both the differences between students and differences that characterize groups of individuals when making design choices so as not to create barriers. This approach is referred to as "inclusive design" or "universal design".[19]

Course curriculum, delivery methods, and evaluation methodologies should be designed inclusively from the outset. This may mean creative use of technology, such as putting materials online, or selecting software that is compatible with screen readers. When courses are online, web-based or CD based, accessibility issues should be addressed up-front, in the development stage.

Did You Know: UNESCO's 1994 World Conference on Special Needs Education, which resulted in the *Salamanca Statement and Framework for Action on Special Needs Education,* emphasized that educational systems and programs should be designed and implemented to take into account the wide diversity of children's needs and characteristics. Article 28 of the Salamanca Statement provides: "Curricula should be adapted to children's needs, not vice-versa. Schools should therefore provide curricular opportunities to suit children with different abilities and interests." [20]

[19] The Center for Universal Design at North Carolina State University defines universal design as "the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. Universal design benefits people of all ages and abilities." Please see http://www.tiresias.org/guidelines/inclusive.htm. Information accessed July 30, 2004.

[20] Document available at http://www.unesco.org/education/pdf/SALAMA_E.PDF. Information accessed May 12, 2004.

When constructing new buildings, undertaking renovations, purchasing new computer systems, launching new web sites, designing courses, setting up programs, services, policies and procedures, education-providers should keep in mind the principles of universal design. New barriers should never be created in the construction of new facilities or in the renovation of old ones. Rather, design plans should incorporate current accessibility standards such as the Canadian Standards Association's Barrier-Free Design[21] and the Principles of Universal Design.[22]

> **In Practice:** A college takes steps to ensure that course handouts and other curriculum materials are available in electronic text format at the time print materials are provided to all students so that students who require alternative formats *(e.g.* students with visual impairments or learning disabilities) do not experience delay. The college also makes efforts to provide course materials to all students by e-mail or the internet to promote even greater inclusiveness.

Inclusive design emphasizes equal participation and recognizes that *all* students have varying abilities and needs. This method of design may involve an entirely different approach and it is based on positive steps needed to ensure equal access for those who have experienced historical disadvantage and exclusion from society's benefits.[23] This positive approach is more effective because it is accessible and inclusive from the start. Barrier prevention is much more preferable to barrier removal, and it is consistent with the notion of disability as a social model.

STEP 2: Removing Barriers

Students with disabilities currently face many obstacles in the education system, including physical, attitudinal and systemic barriers. Students with mobility disabilities, for example, may face barriers in the form of inaccessible school buildings and student housing. Negative attitudes towards and stereotypes about students with disabilities continue to act as obstacles in themselves, with some students not feeling welcome or included in class activities, or social situations at school.

The removal of barriers is necessary in order to give meaning to the right to equality and freedom from discrimination guaranteed to persons with disabilities under Part 1 of the *Code*.

[21] Document available at http://www.csa-intl.org/onlinestore/GetCatalogItemDetails.asp?mat=2004958&Pa. Information accessed May 12, 2004.

[22] See http://www.design.ncsu.edu:8120/cud/univ_design/princ_overview.htm.

[23] In *Eaton*, the Supreme Court of Canada stated:

> Exclusion from the mainstream of society results from the construction of a society based solely on "mainstream" attributes to which the disabled will never be able to gain access... [I]t is the failure to make reasonable accommodation, to fine-tune society so that its structures and assumptions do not result in the relegation and banishment of disabled persons from participation, which results in discrimination against them. *Eaton*, note 10 at para. 67 of Quicklaw version.

And in another decision, the Court also affirmed that standards should be designed to reflect all members of society, insofar as this is reasonably possible. See *British Columbia (Public Service Employee Relations Commission) v. BCGSEU*, [1999] 3 S.C.R. 3 ["*Meiorin*"] at para. 68.

Where barriers already exist, the duty to accommodate requires education providers to make changes up to the point of undue hardship to provide equal access for students with disabilities.

> **In Practice:** A university arranges sensitivity training for all faculty and academic staff on issues facing students with learning disabilities. The training focuses on creating greater awareness of different learning needs and addressing misperceptions and misinformation which in themselves can create barriers to equal access to educational services.

STEP 3: Accommodating Remaining Needs

Even where the principles of universal design have been fully implemented and schools have adopted a comprehensive approach to removing barriers, some barriers may continue to exist for students with disabilities.

Where barriers continue to exist because it is impossible to remove those barriers at a given point in time, then, as part of the duty to accommodate, next best alternatives or temporary solutions must be explored and implemented, if to do so would not result in undue hardship.

Differential treatment may sometimes be required in order to provide students with an equal opportunity to achieve full benefit from the education service. When accommodating the needs of students through differential treatment, educators must still keep in mind and maximize the principles of respect for dignity, individualization, and inclusion and full participation.

How to Achieve Accessibility

- Develop an accessibility policy and student complaint procedure.
- Review and identify accessibility barriers across educational facilities.
- Develop a standardized accessibility plan for future locations based not only on the Ontario *Building Code*, but also on the Ontario *Human Rights Code* and current standards and best practices in barrier-free design.
- For existing facilities, develop a plan, and begin removing barriers.
- Monitor progress toward achieving accessibility.

Creating a Welcoming Environment

Preventing Bullying and Harassment

Part of an educational institution's duty to maintain a safe learning environment for students includes addressing bullying and harassing behaviour.
Students who are being harassed are entitled to the *Code's* protection where the

harassment creates a poisoned educational environment. This protection would apply to sanction: (i) education providers who themselves harass students based on *Code* grounds, and (ii) education providers who know or ought to know that a student is being harassed based on *Code* grounds, and who do not take effective individualized and systemic steps to remedy that harassment.

Responsibilities of Education Providers

Education providers have a responsibility to take immediate steps to intervene in situations where bullying and harassment may be taking place. The harassment of students because of disability will amount to discrimination where it poisons the educational setting and impairs access to educational services. Every person has the right to be free from humiliating or annoying behaviour that is based on one or more grounds in the *Code*. If left unchecked, harassment can impede a student's ability to access educational services equally and to participate fully in the educational experience.

> **Example:** In a classroom, a student with Tourette's Syndrome is repeatedly subjected to taunting and teasing by a group of other students for no apparent reason. The same group of students exclude him from recess activities stating that he is "different" and "weird". It may be inferred from the particular circumstances that the treatment is due to the student's disability even though none of the other students ever made a direct reference to his disability. The student's ability to access the educational program is, as a result of this harassment, impaired.

The courts have established that schools have a duty to maintain a positive, non-discriminatory learning environment.[24] In this regard, education providers should take steps to educate students about human rights and implement strategies to prevent discrimination and harassment. An education provider has a responsibility to take immediate remedial action once made aware of harassing conduct. If an allegation of harassment has been substantiated, appropriate action must be taken. This may include disciplinary action.

A student who is a target of harassment may be in a vulnerable situation. Therefore, there is no requirement that he or she formally object to the behaviour before a violation of the *Code* can be considered to have taken place, where the conduct is or should have been known to be unwelcome. It may be unrealistic to require a student who is the target of harassment to object as a condition of seeking the right to be free from such treatment.

[24] See *Ross*, *supra*, note 13; *Quebec (Comm. Des droits de la personne) c. Deux-Montagnes, Comm. Scolaire*, (1993), 19 C.H.R.R. D/1 (T.D.P.Q.) ("*Kafe* "); *Jubran v. North Vancouver School District No. 44*, (2002), 42 C.H.R.R. D/273, 2002 BCHRT 10 (In *Jubran*, the Tribunal held that the School Board (i) had a duty to provide an educational environment that did not expose students to discriminatory harassment, (ii) knew that students were harassing another student, and (iii) was liable for failing to take adequate measures to stop that harassment. The B.C. Supreme Court quashed the Tribunal's decision on the ground that the harassment was not linked to a protected ground under the legislation, and stated that it did not have to decide any other issues in disposing of the case. The B.C. Court of Appeal is scheduled to hear a further appeal in October of 2004: see *North Vancouver School District No. 44 v. Jubran*, [2003] B.C.J. No. 10).

An education provider who knew of, or should have had knowledge of, the harassment and could have taken steps to prevent or stop it, may be liable in a human rights complaint.

Prevention Through Education

Anti-harassment training for educators and school staff is an important first step in creating a climate of mutual respect in an educational environment. Educators will then be in a position to appropriately address issues of bullying and harassment that arise in the classroom.

Education providers can help to prevent incidents of bullying and harassment before they occur by:

- Exhibiting a clear attitude of non-tolerance towards bullying and harassment.
- Communicating clearly to the student body the consequences of bullying and harassment.
- Educating students about disability issues and encouraging awareness of differing needs and acceptance of diversity.
- Engaging in role-playing and educational exercises to help students develop increased compassion and a greater awareness of the impact that bullying behaviour may be having on others.
- Respecting the confidentiality of students who do report bullying. This will encourage other students who are being harassed to report it in its early stages.

Anti-harassment Policies

Educational institutions can go a long way toward promoting a harassment-free environment for students with disabilities, and other individuals protected by the *Code*, by having a clear, comprehensive anti-harassment policy in place. In cases of alleged harassment, the policy will alert all parties to their rights, roles and responsibilities. Such a policy should clearly set out ways in which the harassment will be dealt with promptly and efficiently. Please see the Appendix for suggested contents of an anti-harassment policy.

In Practice: All students and school staff should be aware of the existence of an anti-harassment policy and the procedures in place for resolving complaints.
This can be done by:

- distributing policies to everyone as soon as they are introduced,
- making new students aware of them by including the policies in any orientation material,
- training educators and school staff on the contents of the policies, and
- providing ongoing education on human rights issues.

Accounting for Non-evident Disabilities

Part of creating a welcoming environment involves being sensitive to the many ways in which a student's disability might manifest and the unique needs which may arise as a result. Some types of disabilities are not apparent to the average onlooker. This can be because of the nature of the specific disability in question: it may be episodic, its effects may not be visible, or it may not manifest consistently in all environments. Examples of non-evident disabilities include mental disabilities, learning disabilities, chronic fatigue syndrome, environmental sensitivities, and epilepsy.

Students with non-evident disabilities often face unique challenges in the education system. For some, requesting an accommodation may be especially difficult if a teacher or professor doubts the authenticity of the request because they cannot "see" it. Sensitivity and informed understanding on the part of educators, school staff, and fellow students alike can combat stereotypes, stigma and prejudice, all of which can have a discriminatory effect on students with non-evident disabilities.

Mental disability is a form of non-evident disability that raises unique issues in the educational context. Much misinformation continues to exist about mental illness and too often persons with mental disabilities are labelled and judged according to inaccurate preconceptions and assumptions. Rules, preconditions, policies or practices that treat persons with mental disabilities differently from other persons with disabilities may be discriminatory on their face.[25]

Academic environments must be sensitive to the needs of all students, including students with mental disabilities. It is important to keep in mind that some mental illnesses may render the student incapable of identifying his or her needs. An education provider has a responsibility to take an active role in addressing situations that may be linked to mental disability. Where an education provider has reason to believe that a student may require assistance or accommodation due to a mental disability, further inquiries should be made, and support offered. Even if an education provider has not been formally advised of a mental disability, affording differential treatment to a student based on the perception of a disability may still engage the protection of the *Code*.

> **In Practice:** A third year university student begins to exhibit erratic behaviour. Although she has been a successful student to date, she begins missing classes and she fails to submit her coursework on time. In the middle of a lecture, she suddenly starts shouting inexplicably. The university professor arranges to meet with the student after class to inquire into the student's situation. As a result of this discussion, the professor contacts the university's Office for Students with Disabilities. A meeting is arranged and the student is offered assistance. The university helps arrange counselling and support services for the student who, ultimately, is diagnosed with schizophrenia. The Office for Students with Disabilities then works with the student and her professors to arrange academic accommodations.

[25] For example, see *Gibbs v. Battlefords and Dist. Cooperative Ltd.* [1996] 3 S.C.R. 566, 27 C.H.R.R. D/87.

Education providers should educate themselves, school staff and students about non-evident disabilities, including mental illness, so as to provide a welcoming and safe environment for all students with disabilities. Schools should ensure that all students are provided with learning opportunities that foster an awareness and appreciation of diversity issues in the educational environment, and combat negative attitudes and stereotypes.

Discipline, Safe Schools and Students with Disabilities

The stated purposes of safe schools legislation, regulations, and related school board policies – to promote respect, non-violent conflict resolution and the safety of people in schools – are reasonable and *bona fide* and of paramount importance.[26] At the same time, in some cases, discipline policies may have an adverse effect on students with disabilities.[27] Education providers have a duty to assess each student with a disability individually before imposing disciplinary sanctions. Disciplinary sanctions include detentions, exclusions, suspensions, expulsions, and other forms of punishment. Educators should attempt to determine whether the behaviour in question is a manifestation of the student's disability by considering:

- formal assessments and evaluations of the student,
- relevant information supplied by the student or the student's parents,
- observations of the student,
- the student's accommodation plan,[28]
- whether the accommodations provided for in the student's accommodation plan were appropriate, and whether these accommodations were being provided consistent with the student's accommodation plan,
- whether the student's disability impaired his or her ability to understand the impact and consequences of the behaviour subject to disciplinary action,
- whether the student's disability impaired his or her ability to control the behaviour subject to disciplinary action, and
- whether the student has undetected disability-related needs that require accommodation.

Under the *Code*, education providers have a legal obligation to accommodate students with disabilities up to the point of undue hardship. All students with disabilities, even those whose behaviour is disruptive, are entitled to receive accommodation.

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[26] In 2000, the Ontario Legislature passed the *Safe Schools Act*. The *Act* gives force to the provincial Code of Conduct and provides principals, teachers, and school boards with more authority to suspend and expel students and involve the police. The *Safe Schools Act* specifies infractions which require mandatory suspensions, expulsions and police involvement. It also permits school board policies to add infractions for which suspensions or expulsions are either mandatory or discretionary.

[27] The potential discriminatory effect of safe school legislation and policies on individuals protected by the *Code* was a prominent concern raised during the Commission's disability and education consultation, and is discussed at length in *The Opportunity to Succeed*. This issue was also raised extensively in the Commission's inquiry into racial profiling, and is discussed in the Commission's report entitled *Paying the Price: The Human Cost of Racial Profiling*. Both documents are available online at the Commission's website, www.ohrc.on.ca.

[28] For a more detailed discussion on accommodations plans, please refer to the section of the Guidelines entitled "Accommodation Planning"

Did You Know: Other jurisdictions have implemented safeguards to protect students with disabilities from being disciplined for behaviour that is disability-related. For example, in the United States, the *Individuals with Disabilities Education Act* requires that, where certain disciplinary action is taken or contemplated against a student with a disability, a review must be conducted of the relationship between the child's disability and the behaviour subject to the disciplinary action.[29]

Educators must consider a range of strategies to address disruptive behaviour. Such strategies will include reassessing and, where necessary, modifying the student's accommodation plan, providing additional supports, implementing alternative learning techniques, and other forms of positive behavioural intervention.

If a student's behaviour is not a manifestation of his or her disability, that is, where there is no causal relationship between the student's disability and the behaviour in question, then that student would be subject to the normal consequences of his or her misconduct. Where discipline is warranted, however, it is to be implemented with discretion and with regard to the student's unique circumstances.[30]

There may be rare situations in which a student's behaviour, even where it is a manifestation of his or her disability, poses a health and safety risk to the student him or herself, other students, teachers and/or school staff. While an education provider in this type of situation continues to have a duty to accommodate the student up to the point of undue hardship, it is recognized that there may be legitimate health and safety concerns that need to be addressed. In some situations involving health and safety risks, placement in a mainstream classroom may not be the most appropriate accommodation. This issue is discussed in the "Undue Hardship Standard" section of the Guidelines under "Health and Safety Requirements".

Accommodation Process

Basic Principles

The principles of respect for dignity, individualization, and inclusion and full participation apply both to the substance of an accommodation and to the accommodation process. The manner in which an accommodation is provided and the methods by which it is implemented are subject to human rights standards.

[29] See *Individuals with Disabilities Education Act*, *supra*, note 18, ss. 615(k)(4)(A)(ii).

[30] The Ontario Court of Appeal has commented that discipline measures pursuant to the regulations under the *Education Act* must take into account a student's individual circumstances. See *Bonnah (Litigation Guardian of) v. Ottawa-Carlton District School Board* (2003), 64 O.R. (3d) 454 (Ont. C.A.) at para. 37.

At the heart of the accommodation process is the responsibility, shared by all parties, to engage in meaningful dialogue about accommodation, and to seek out expert assistance as needed. Everyone involved should co-operatively engage in the process, share information, and avail themselves of potential accommodation solutions.[31]

Sharing Information

Information about accommodation procedures should be readily available to students and, where applicable, their parents. It is important to create an educational environment that encourages and supports accommodation requests, and educators and school staff should be encouraged to show a positive attitude toward accommodation. Educational institutions can demonstrate their support for and commitment to providing accommodation by making public announcements during meetings or through the institution's communication channels. All students should be informed that students with disabilities are entitled to accommodation, the process for requesting an accommodation, their right to participate in such a process, and any other information that may be helpful in making the accommodation process more understandable and accessible. In addition, the accommodation process should be part of the regular life and discourse of the educational institution. At the same time, it should respect confidentiality and the process itself should not result in an undue burden on individual students and/or their parent(s)/guardian(s).

Timeliness

Accommodations must be provided in a timely manner. Delays in the provision of accommodation have the potential to directly impede a student's ability to access and participate in the educational curriculum. As such, unreasonable delays may be found to violate the procedural duty to accommodate, and thus constitute a breach of the *Code*.

Examples of delays that students with disabilities may experience include:

- waiting long periods of time for textbooks and other academic materials in alternative formats,
- delays in the receipt of professional assessments,
- delays in the provision of support staff (*e.g.* educational assistants, special needs assistants, sign language interpreters, *etc.*),
- waiting lists for other types of special education services (*e.g.* identification hearings, classroom placements, preparation of accommodation plans, implementation of accommodation plans, processing of claims for funding, *etc.*), and
- delays in receiving needed adjustments to accommodations.

When making accommodation requests, students have a responsibility to give education providers ample time to ensure that accommodations will be available when needed.

[31] See *Disability Policy*, *supra*, note 2 at Part 3.4.

Where the most appropriate accommodation cannot be provided right away, education providers have a duty to provide for interim accommodation as the next best and timely solution while planning for a more appropriate and permanent solution. In the meantime, this will enable students to be as productive and involved as possible.

> **In Practice:** A personal reader may be an interim accommodation for a person who has low vision, while she is waiting for an electronic transcription of course materials to be provided.

Dispute Resolution

Education providers should provide an effective and transparent mechanism to resolve disputes that arise in the accommodation process. At the primary and secondary levels, students and their parents should have timely access to a mechanism that will hear and resolve issues related to the identification of a student's disability-related needs, placement, programs and services, and any other process issues that may arise. The mechanism should be comprised of or have access to qualified individuals representing a range of interests. At the post-secondary level, students should also have an avenue to address and resolve accommodation disputes in a timely fashion.

The purpose of a dispute resolution mechanism should be to identify problems and determine ways to solve them which would permit the student access to educational services with a minimum of delay. Educational institutions should facilitate this process and provide reasonable assistance to students, and where applicable, their parents/guardians. Dispute resolution procedures that are not timely or effective could amount to a failure of the duty to accommodate.

Where there is a dispute regarding a proposed accommodation, and an education provider alleges undue hardship, the education provider must demonstrate it. It is not the responsibility of a student seeking accommodation to prove that a proposed accommodation would *not* cause undue hardship.[32]

Training

Staff training is one of the critical supports that an educational institution can provide in the accommodation process. Disability awareness training should be a mandatory part of professional training for all teachers, faculty and school staff, and should be available on an ongoing basis throughout the school year. The student being accommodated, those responsible for providing accommodation, and other staff should learn about disability issues, accommodation and the implemented choices.

[32] The elements of undue hardship will be discussed in greater detail in the section of the Guidelines entitled "Undue Hardship Standard".

In Practice: At the primary and secondary levels, effective training will enable teachers to deal effectively with disability issues in the classroom. Training will also help teachers educate students about issues of diversity and difference.

In Practice: At the post-secondary level, computer systems staff may need to learn about the interaction of a new access device with the organization's computer system.

Training should be repeated if changes in the educational institution or in the student's accommodation plan make it necessary to modify the accommodation.

Confidentiality and Disclosure of Information

When requesting accommodation from an education provider, students (and/or their parent(s)/guardian(s)) have a responsibility to provide sufficient information about their disability-related needs in order to facilitate the accommodation. Educational services at the lower levels of education are broad and may include cultivating aspects of the student's development beyond those which are strictly academic. Since the accommodations that younger students may require will often relate to their overall well-being, it may be appropriate for education providers at the primary and sometimes at the secondary levels to require more extensive and detailed information about a student's disability-related needs. At the higher levels of schooling, where educational services are defined more narrowly and the focus is more on academic standards and accreditation, accommodations will generally be related to the student's academic needs and the degree and type of information required by education providers will not likely be as broad.

In an ideal world, all students, including students with disabilities, would be comfortable discussing all aspects of their personal identities in an open manner without fear of discrimination and/or harassment. However, in reality, some students may be reluctant to disclose their disabilities at school, particularly at the secondary and post-secondary levels, for fear of being stigmatized, denied opportunities, or arousing unwanted curiosity and unnecessary concern from others. Some will have had bad experiences in the past that may have included being on the receiving end of intolerant attitudes and other forms of discriminatory treatment.

Protecting Disability-Related Information

It is important that an education provider take steps to ensure that students feel safe disclosing a disability. In order to avoid labelling or stereotyping, it is essential that education-providers take precautions to safeguard the disability-related information of students. This is especially important for individuals with disabilities that continue to carry a strong social stigma, such as mental illness and HIV/AIDS. Maintaining confidentiality for students with disabilities is an important procedural component of the duty to accommodate. The degree of confidentiality afforded to students will likely vary according to the level of education being offered. For example, confidentiality may be less of an issue for students at the primary school level where the educational service being offered is broad and student autonomy is less of an issue. For students at the secondary and post-secondary levels, privacy and confidentiality will likely be of greater importance, particularly as students, in many cases, are developing greater independence and will often be more in control of managing their own accommodation needs.

Personal information that either directly or indirectly identifies that a student has a disability should remain exclusively with designated personnel in a secure filing system away from the student's academic record in order to protect the student's privacy. This is meant to protect the institution from allegations of discrimination, as well as the student, from potential discriminatory practices.

> **In Practice:** In the day-to-day activities of the educational institution, education providers must take care to avoid disclosing a student's disability. For example, faculty should not speak about a student's disability in front of their class or other students, disclose a student's personal disability information without permission to other faculty/staff, leave written information regarding a student's disability in a public place or in plain view, or use names when discussing general disability issues.

Any data collected on students with disabilities (such as numbers of students served, types of disabilities, or accommodations received) should be collected in aggregate, and must not include any information that would reveal a student's identity. Particularly at the secondary and post-secondary levels, educational institutions must ensure that data on disability do not appear on academic documents including test results, transcripts, student records, or graduation documentation. Distinguishing the score results of a student who received accommodation has the potential of revealing the existence of a disability and exposing that student to discrimination.

> **In Practice:** Transcripts, entrance test result forms, or licensing exam result forms should not indicate that a student received accommodation, or that academic requirements were met under "special" or "non-standard conditions."

For some students, disclosing a disability may not be necessary because the disability may not impact upon their study. This will especially be the case where educational institutions have designed their technology structures, curricula, programs and services inclusively, and adaptation or modification to meet the needs of students with disabilities is therefore unnecessary.

Information to be Provided

While a student seeking accommodation must provide information about his or her disability-related needs, and in some cases may have to provide medical confirmation that a disability exists, it is not generally necessary, particularly at the secondary and post-secondary levels, for the student to explicitly inform the education provider of the specific type of disability, or to provide specific medical information (*e.g.* a diagnosis) about a disability. A diagnosis of a student's medical condition will not usually be relevant to or necessary for planning accommodation, and, wherever possible, an education provider should attempt to ascertain the disability-related needs of a student without requiring a formal diagnosis.

There will be some cases, however, where there may be overlap between a description of the student's needs and an actual diagnosis. In these circumstances, it may be necessary for an education provider to require a diagnosis in order to appropriately accommodate a student.

> **Example:** In the course of providing information to her school principal to facilitate the provision of accommodation, a Grade 11 student provides an assessment of her learning needs from an outside expert. The assessment outlines the learning supports required by the student, and in doing so, identifies the student as having a learning disability.

The staff in offices for students with disabilities at colleges and universities have expertise in dealing with accommodation issues in the academic environment and, as such, can play a vital role in assisting with the accommodation process.

Students may choose to provide these offices with more detailed information about their disabilities, including, for example, a diagnostic assessment, where to do so would facilitate the provision of accommodation. Offices for students with disabilities must ensure that the disability-related information of students is kept strictly confidential.

There may also be some instances where a student will be asked to produce a medical diagnosis of his or her disability for the purposes of establishing eligibility for student funding programs.

> **Example:** A government-sponsored fund developed specifically to assist college and university students who are deaf, deafened or hard of hearing requires that students provide a medical diagnosis in order to be considered eligible.

In situations where a diagnosis is necessary, the educational institution is responsible for implementing procedures to ensure that student confidentiality is maximized, the information requested is limited to that which is specifically needed for the program, and the information is disseminated only to those responsible for administering the program.

In some instances, there may be a reasonable and *bona fide* basis for an education provider to question the legitimacy of a student's request for accommodation or the adequacy of the information provided. In such cases, the education provider may request confirmation or additional information from a qualified health care professional. No one can be forced to submit to an independent medical examination, but failure to respond to reasonable requests may delay the provision of accommodation until such information is provided.

Appropriate Accommodation

Basic Principles

It is the Commission's position that the duty to accommodate requires that the most appropriate accommodation be determined and then undertaken, short of undue hardship. The most appropriate accommodation is one that most respects the dignity of the student with a disability, meets individual needs, best promotes inclusion and full participation, and maximizes confidentiality.

An accommodation will be considered appropriate if it will result in equal opportunity to attain the same level of performance, or to enjoy the same level of benefits and privileges enjoyed by others, or if it is proposed or adopted for the purpose of achieving equal opportunity, and meets the student's disability-related needs.

The aim of accommodation is the inclusion and full participation of students with disabilities in educational life. Education providers must make efforts to build or adapt educational services to accommodate students with disabilities in a way that promotes their full participation. Barriers must be prevented or removed so that students with disabilities are provided with equal opportunities to access and benefit from their environment and face the same duties and requirements as everyone else, with dignity and without impediment.

Forms of Accommodation

Depending on a student's individual needs and the nature of the educational service being provided, accommodations that students with disabilities may require may include:

- modifications to improve the physical accessibility of educational buildings, facilities, resources and student housing,
- support services, such as assessment or advice on learning strategies,
- a modified curriculum,

- modification to evaluation methodologies, such as extended time when taking tests and completing assignments, or alternative evaluation formats,
- academic materials in alternative formats (*e.g.* Braille, large print, digitized text, voice activated software, assisted hearing devices),
- sign language interpretation services,
- provision of and training on adaptive technology,
- in-class assistance from specialized professionals,
- in-class supports (*e.g.*, tutors, interpreters, notetakers, personal readers), and
- transportation to and from school.

Placement

At the primary and secondary levels, before considering placing a student in a self-contained or specialized classroom, education providers must first consider inclusion in the regular classroom.[33] In most cases, appropriate accommodation will be accommodation in the regular classroom with supports.[34] However, every student with a disability is unique. In order to provide appropriate accommodation to all students with disabilities, education providers must, with the assistance of parental input, assess each student's particular strengths and needs, and consider these against a full range of placements, programs and services. Ultimately, appropriate accommodation will be decided on an individual basis.

In determining the most appropriate accommodation, education providers should consider factors such as:

- the student's preferred learning style
- the student's academic performance (grades and other signs of advancement or regression)
- the length of time the accommodation will take to arrange
- whether supports provided are compatible with accommodation supports used at home
- the geographical proximity of a placement to the student's home (ideally, the student should be able to attend his or her neighbourhood school)
- the extent to which a placement affords the student with opportunities to socialize and interact with other students
- the degree to which a placement addresses health and safety issues

[33] The Ministry of Education has articulated its policy position on this issue stating its commitment to the principle that "the integration of exceptional students should be the normal practice in Ontario, when such a placement meets the pupil's needs and is in accordance with parental wishes." Please see MEDU Memorandum dated June 9, 1994 to directors of education, superintendents of special education, and principals as quoted in Ministry of Education, *Special Education: A Guide for Educators*, 2001 at D10.

[34] In situations where an education provider makes a determination that home instruction is the most appropriate accommodation for a student with a disability, even if it is only an interim placement while other more permanent accommodation solutions are being explored, the education provider continues to have a duty to accommodate the student up to the point of undue hardship and to bear the costs of the accommodation.

In the *Eaton* decision, the Supreme Court of Canada established that equality may sometimes require different treatment that does not offend an individual's dignity.[35] Emily Eaton, a student with a disability, was initially placed in an integrated classroom. However, after three years, her teachers and assistants concluded that this placement was not in her best interests and she was moved to a specialized classroom. Her parents disputed the change and appealed the decision up to the Supreme Court of Canada. The Court stated that the failure to place Emily Eaton in an integrated setting did not create a burden or disadvantage for her, because such a placement was not in her best interests. According to the Court,

> While integration should be recognized as the norm of general application because of the benefits it generally provides, a presumption in favour of integrated schooling would work to the disadvantage of pupils who require special education in order to achieve equality .... Integration can be either a benefit or a burden depending on whether the individual can profit from the advantages that integration provides.

At the same time, the Supreme Court has also said that the search for accommodation is a multi-party inquiry.[36] In education, this means that students with disabilities, their parents or guardians, as well as educators, administrators and any necessary experts together must consider the best interests of the student in determining the most appropriate placement accommodation. In some circumstances, the best way to meet the individual needs of students with disabilities with dignity may be to provide separate or specialized services. This may include education in a self-contained classroom within a neighbourhood school, or it may involve enrolment in a specialized school, including a provincial school or a demonstration school. However, it is the Commission's view that, before considering placing a student in a self-contained, or specialized classroom, education providers must first consider inclusion in the regular classroom.

Where placement outside the regular classroom is determined to be the most appropriate accommodation, the education provider should still make reasonable efforts to include the student in school programs and activities with students without disabilities, wherever possible. For example, the student should be afforded the opportunity to participate in music and art classes, lunch, recess, gym, school trips, etc.

Accommodation Process as a Continuum

Accommodation is a process and is a matter of degree, rather than an all-or-nothing proposition, and can be seen as a continuum. At one end of this continuum would be the most appropriate accommodation that meets a student's needs. Alternative accommodation (that which would be less than "ideal") might be next on the continuum and might also be implemented as an interim solution until the most appropriate accommodation is implemented or restored. This also means that in the course of

[35] *Eaton*, *supra*, note 10.

[36] *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 S.C.R. 970 at para. 43.

exploring other appropriate alternatives, the most appropriate accommodation known at that given point in time should still be implemented or maintained.

It is the Commission's view that short of undue hardship, the highest point in the continuum of accommodation must be achieved. However, if there is a choice between two accommodations which are equally responsive to the student's needs in a dignified manner, then those responsible for accommodation may select the one that is less expensive or that is less disruptive to the organization.

> **In Practice:** While in grade 3, a student with dyslexia received the one-on-one services of a full-time Special Needs Assistant as an accommodation. Based on an assessment of the nature and extent of the student's needs along with a review of her academic and social progress, this level of intensive support was no longer necessary once the student was in grade 4 and the school board decided that the services of a part-time Special Needs Assistant would be an appropriate accommodation.

The *Code* does not guarantee the right to any one particular form of accommodation. Before opting for the less expensive or disruptive option, however, an accommodation provider must first demonstrate, considering the student's specific needs, that two accommodations are in fact equally responsive and equally dignified.

Modifying Educational Requirements

Section 17 of the *Code* states that a right is not infringed if the person with a disability is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right. Once appropriate accommodation is received, students must still be able to perform the essential requirements of the service. While courts and tribunals have provided little guidance on the nature of essential duties and requirements, terms that have been used include indispensable, vital, and very important.

Depending on the level of education in question, essential requirements may be defined quite differently. At the primary and secondary levels, for instance, there is a statutory right to education for all. Each child is entitled to the opportunity to develop his or her unique abilities and talents. Therefore, the essential requirements of the educational service at these levels would be defined broadly, and would likely include the student's overall physical and social development, in addition to the student's academic performance.

At the post-secondary level of education, the educational right would be defined more narrowly, and the essential requirements of the educational service at this level would likely be more focused on academic performance. An appropriate accommodation at the post-secondary level would enable a student to successfully meet the essential requirements of the programme, with no alteration in standards or outcomes, although the manner in which the student demonstrates mastery, knowledge and skills may be altered. In this way, education providers are able to provide all students with equal opportunities to enjoy the same level of benefits and privileges and meet the requirements for acquiring an education without the risk of compromising academic integrity.[37]

> **In Practice:** A college policy requires students to fulfil a minimum number of in-class hours in order to receive credit for a course. However, in response to the needs of students whose disabilities make it difficult or impossible to attend school full-time, the policy states that the attendance requirements may be modified where appropriate.

A requirement should not lightly be considered to be essential, but should be carefully scrutinized. This includes course requirements and standards. For example, at the post-secondary level, it may likely be an essential requirement that a student master core aspects of a course curriculum. It is much less likely that it will be an essential requirement to demonstrate that mastery in a particular format, unless mastery of that format *(e.g.*, oral communication) is also a vital requirement of the program.

> **In Practice:** A university professor in a nursing program requires all students to demonstrate proficiency in her course by passing an in-class essay test worth 100% of the student's final grade. The primary aim of the course is to teach students clinical evaluation methodology. Unless the education provider can show that the 100% essay mode of evaluation is an essential requirement of the course, it may be found to discriminate against students with learning disabilities and other types of disabilities that make it difficult to process large amounts of written material under strict time constraints.

The onus is on the education provider to show that a student is incapable of performing the essential requirements of the educational service, even with accommodation. Conclusions about inability to perform essential requirements must not be reached without actually testing the ability of the student. It is not enough for an education provider to assume that a student cannot perform an essential requirement. Rather, there must be an objective determination of that fact.

[37] For a more detailed discussion on academic integrity, please see *The Opportunity to Succeed* at pages 61-62.

Non-essential requirements are those requirements that would not detract from the main purpose of the educational service if they were waived. Accommodation for non-essential requirements may include finding another way for the student to meet the requirement, having it done differently, or dropping it altogether.

Accommodation Planning

As part of the duty to accommodate, education providers are responsible for taking steps to plan for the accommodation of students with disabilities. Effective planning will take place both on an organizational level, and on an individual level in relation to each student with accommodation needs. Individual planning should also address the transition needs of a student as he or she moves from one level or type of education to another. Accommodation planning may also require education providers to collect and analyze aggregate data on students with disabilities in order to ensure that education policies and practices do not have an adverse effect on these students.

Accommodation is an ongoing process and accessibility plans and accommodation plans should be reviewed on a regular basis. As with any other plan, documenting progress in writing helps with monitoring, accountability and future planning. Where academic requirements or facilities change over time, education providers are required to review, modify or upgrade accommodations. Plans should be revised as the individual's needs, or the educational institution, changes.

> **Example:** A change in the computer network could interrupt a student's efficient use of a technical aid connected to the system. New equipment in the school or educational institution may require additional accommodation or modifications to existing accommodations.

Institutional Accessibility Plans

Education providers must take steps to ensure that accessibility plans comply with the requirements of human rights law and policy. To be effective, an accessibility plan should set out an educational institution's specific commitments to providing equal access to educational services for all students. In this regard, accessibility plans should:

- set goals, identify steps being taken and report on achievements made by the educational institution with respect to adhering to the principles of inclusion by design, barrier removal, most appropriate or next best or interim accommodation of remaining needs, individualization, confidentiality, and shared responsibilities in the accommodation process;
- report on policies, procedures and mechanisms for implementation, monitoring, education and training, input, dispute resolution and accountability; and
- include timelines, performance measures and accountability structures; and respect the dignity and the right to inclusion and participation of students with disabilities in the process of planning for and implementing accessibility.

In Practice: Education providers might wish to prepare and make available to the public a formal report outlining their commitment to providing accessible education for all students. The Report might include the educational institution's accessibility plan, and the findings of data collection and analysis. Where the data reveals discrepancies, the report could also set out steps that will be taken to address inequities and bring the education provider's practices into compliance with the *Code* and Commission policy.

Individual Accommodation Plans

Education providers should also develop an accommodation plan for each student with a disability who requires accommodation, in consultation with that student and/or his or her parent or guardian. At the primary and secondary levels, accommodation plans will likely be more prescriptive and structured and include learning objectives; whereas, at the post-secondary level, students might prefer to have more control over their accommodation planning, and plans would likely focus on specific accommodation services or modifications to evaluation methods, and would not be as tied to learning outcomes. Depending on the student's individual needs and preferences, an effective accommodation plan may include:

- a statement of the student's individual limitations and needs as they relate to accessing the service of education, including any necessary assessments and information from experts or specialists;
- arrangements for necessary assessments by a health or other professional;
- identification of the most appropriate accommodation;
- a statement of the specific services and supports required by the student (*e.g.* assistive technology devices);
- the ordering of any necessary products or services;
- the student's present levels of educational performance and a statement of current educational status (may not be required at the post-secondary level);
- a statement of annual goals (including specific performance indicators and short-term objectives);
- incorporation of input from student and/or parent(s)/guardian(s);
- clear timelines for the various stages of the accommodation process;
- specific steps to be taken to meet annual goals;
- criteria, procedure and schedule to determine whether the accommodation is facilitating the student's educational goals;
- a mechanism for review and re-assessment, where necessary, to determine whether the student's accommodation needs are being met; and/or,
- an accountability mechanism (for example, if plan not implemented, or if not implemented effectively or in a timely fashion.

Transitioning

At the primary and secondary levels, accommodation plans should also include a statement with respect to the student's transition needs. It might include, for example, a plan to have the student take specific courses designed to prepare him or her for post-secondary study, or it might outline a strategy to have the student participate in a vocational educational program or other type of "co-op" placement. The focus should be on how the student's educational program can be planned to facilitate a successful transition to his or her goals after secondary school. Each student is unique, and goals may include post-secondary schooling, vocational training, integrated employment, continuing and adult education, independent living, or community participation. School staff should inform students that, where the student so desires, staff will communicate with the student's prospective educational institution or employers with regard to accommodation practices or effective learning strategies to help facilitate the student's transition.

Transition planning will also be appropriate in situations where students are transferring from one type of educational setting to another.

> **Example:** An 11 year-old girl with a history of behavioural difficulties has made significant progress in a section 20 program.[38] She has learned effective anger management techniques and is ready to be re-integrated into the regular school system with supports. Working together, her former and prospective teachers, her parents and medical professionals develop a plan in order to facilitate this transition.

Data Collection

Effective planning requires education providers to ensure that education policies and practices do not have an adverse impact on students with disabilities, or other individuals protected by the *Code*. In order to make sure that education environments are free from social phenomena widely recognized as discriminatory such as profiling, institutionalized barriers, socio-economic disadvantage or unequal opportunity on the basis of protected *Code* grounds, education providers should collect statistical information for the purposes of monitoring, preventing and ameliorating systemic and adverse discrimination.

[38] Section 20 programs provide educational programming to students who, for a variety of reasons, require their educational needs to be met outside of the regular school system in specialized settings.

Did you know: In 2004, the Toronto District School Board ("TDSB"), in conjunction with provincial organizations, established the *Safe and Compassionate Schools Task Force* to review the Board's Safe Schools Policy and its implementation. In its submission to the Task Force, the Commission recommended that the TDSB collect and analyze data on suspensions and expulsions under the *Safe Schools Act* and that this data be used to prevent and correct any discriminatory effect.[39]

Statistics and data collection may also be warranted in situations where an education provider has an objective basis to believe that systemic infringement of rights may be occurring, or where there are persistent allegations or perceptions of systemic discrimination, or where it is an organization's intent to prevent or ameliorate disadvantage already known to be faced by persons with disabilities. Where problems are identified, data analysis can provide useful direction for remedies to address systemic discrimination as well as evaluate the success of such measures. This is in keeping with the remedial purpose of the *Code* and with recent human rights jurisprudence that finds organizations have an obligation to take into account a person's already disadvantaged position within Canadian society.[40]

Other Jurisdictions: In the United States, the *Individuals with Disabilities Education Act* requires states to collect and provide data on students with disabilities on an annual basis. Internationally, the United Nations has also recommended that "States Parties should encourage the collection, analysis and codification of statistics and information on disabilities and on the effective enjoyment of human rights by persons with disabilities".[41]

Data collection and the use of data should only ever be undertaken for legitimate purposes not contrary to the *Code* such as ameliorating disadvantage, removing systemic barriers and promoting substantive equality for individuals and groups protected by the *Code*. Collecting information about characteristics based on enumerated grounds under the *Code* may lead to an inference that the information might be used to treat an individual or group in a discriminatory manner. To address such concerns, measures should be taken in order to ensure that the collection and use of data is done in a legitimate and appropriate manner. [42]

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[39] See Recommendation #3 of the *Submission of the Ontario Human Rights Commission to the Toronto District School Board Safe and Compassionate Schools Task Force* (April 2004) available online at the Commission's website: www.ohrc.on.ca. In addition, in *The Opportunity to Succeed*, the Commission recommended that school boards collect and analyze data on suspensions and expulsions under the *Safe Schools Act* to ensure that the *Act* is not having an adverse effect on individuals protected by the *Code*. The Commission also recommended that the Ministry of Education collect and analyze data on placements of students with disabilities for the purpose of addressing iniquities and promoting compliance with the *Code* and Commission policy. See *The Opportunity to Succeed*, *supra*, note 27 at pp. 25 and 40 respectively.

[40] The notion that substantive differential treatment can result because of a distinction, exclusion or preference, or because of a failure to take into account a person's already disadvantaged position within Canadian society was first articulated in *Law*, *supra*, note 12. The approach has been affirmed in several subsequent cases, most notably two cases dealing with discrimination on the basis of disability: *Mercier*, supra, note 8, and *Granovsky*, *supra*, note 11.

[41] *Individuals with Disabilities in Education Act*, *supra*, note 18, s. 618(c); Draft Comprehensive and Integral International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, at Article 6, United Nations Ad Hoc Committee, January 2004.

[42] For more information, please see the Ontario Human Rights Commission's *Guidelines for Collecting Data on Enumerated Grounds Under the Code*, available online at the Commission's website: www.ohrc.on.ca.

In Practice: At the primary and secondary levels, data collected could include: numbers of students in mainstream classrooms versus self-contained classrooms, number of students in each placement according to type of disability, number of students who also belong to other historically disadvantaged groups, *etc.* At the post-secondary level, data collected could include numbers of students who leave their programs before graduating, and lengths of time taken to provide accommodations.

Where an analysis of this data reveals significant discrepancies with respect to trends in identification, placement, disciplinary action, graduation and/or drop-out rates, education providers should review and revise their policies, practices and procedures accordingly to ensure that they are in compliance with the *Code.*

Undue Hardship Standard

Under the *Code,* every student with a disability is entitled to accommodation up to the point of undue hardship. The *Code* sets out only three elements that may be considered in assessing whether an accommodation would cause undue hardship:

- cost,
- outside sources of funding, if any, and
- health and safety requirements, if any.

It is the Commission's position that this means that only factors that can be brought within these three elements will be considered.[43]

Example: A union opposes the hiring of a specialized educational professional to assist in the accommodation of a student with a learning disability because the professional is not part of the bargaining unit. Unless the union can show that the hiring will cause undue hardship on the basis of one of the three elements set out above, disruption to the collective agreement will not, in and of itself, be enough to establish undue hardship.

In order to claim the undue hardship defence, the education provider has the onus of proof. The student requesting accommodation does not have to prove that the accommodation can be accomplished without undue hardship. The nature of the evidence required to prove undue hardship must be objective, real, direct, and, in the case of cost, quantifiable. The education provider must provide facts, figures, and scientific data or opinion to support a claim that the proposed accommodation in fact causes undue hardship. A mere statement, without supporting evidence, that the cost or risk is "too high" based on impressionistic views or stereotypes will not be sufficient.

[43] The broad and purposive interpretation of the *Code* and human rights generally means that rights must be construed liberally and defences to those rights should be construed narrowly. There are a number of cases that confirm this approach to the interpretation of human rights statutes. Most recently, in *Mercier, supra* note 8, the Supreme Court summarized these cases and outlined the relevant principles of human rights interpretation. Moreover, the *Code* has primacy over other legislation (see sub-section 47(2) of the *Code*). relevant principles of human rights interpretation. Moreover, the *Code* has primacy over other legislation (see sub-section 47(2) of the *Code*).

Objective evidence includes, but is not limited to:

- financial statements and budgets,
- scientific data, information and data resulting from empirical studies,
- expert opinion,
- detailed information about the activity and the requested accommodation, and
- information about the conditions surrounding the activity and their effects on the person or group with a disability.

Elements of the Undue Hardship Defence

Costs

What the Courts Say: The Supreme Court of Canada has said that, "One must be wary of putting too low a value on accommodating the disabled. It is all too easy to cite increased cost as a reason for refusing to accord the disabled equal treatment".[44]

The costs standard is a high one. Where possible, an education provider must take steps to recover the costs of accommodation. This can be done, for example, by obtaining grants, subsidies, and other outside sources of funding[45] which help to offset accommodation expenses. Tax deductions and other government benefits flowing from the accommodation must also be considered. In addition, inclusive design and other creative design solutions can often avoid expensive capital outlay.

In determining whether a financial cost would alter the essential nature or substantially affect the viability of the educational institution, consideration will be given to:

- The size of the institution – what might prove to be a cost amounting to undue hardship for a small educational institution will not likely be one for a larger educational institution.
- Can the costs be recovered in the normal course of operation?
- Can other divisions, departments, *etc.* of the educational institution help to absorb part of the costs?

44 *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights)*, [1999] 3 S.C.R. 868 [*"Grismer"*] at para. 41.

45 Outside sources of funding may include:

- **Funds that may be available to the student only, provided through government programs and that are linked to the student's disability.** Students might be expected to take advantage of these programs when making accommodation requests of an education provider. However, such resources should most appropriately meet the accommodation needs of the student, including respect for dignity.
- **Funds that would assist education providers defray the costs of accommodation**. Other outside accommodation resources might be available to a student with a disability when more than one organization has an overlapping or interconnected sphere of responsibility for the duty to accommodate.
- **Funding programs to improve accessibility for persons with disabilities – a corporate or organizational responsibility.**

- Can the costs be phased in – so much per year?
- Can the education provider set aside a certain percentage of money per year to be placed in a reserve fund to be used for accommodation issues?[46]
- Will the educational programs and services for all students be substantially and permanently altered? For example, will a school board be forced to cancel its music programs to fund an accommodation?

The government is required to ensure that school boards have access to sufficient funding to ensure equal access to education. School boards, in turn, have a responsibility to provide adequate funding to schools to enable the provision of accommodations. Where an education provider receives funding from government for the purposes of promoting accessibility and meeting the needs of students with disabilities, the education provider should track accommodation data and alert the government to any funding deficiencies that exist.

Education providers cannot use limited resources or budgetary restrictions as a defence to the duty to accommodate without first meeting the formal test for undue hardship based on costs. Further, education providers are not to decide which accommodations are most appropriate for a student based on financial considerations or budgetary constraints. Whether an accommodation is "appropriate" is a determination completely distinct and separate from whether the accommodation would result in "undue hardship." If the accommodation meets the student's needs and does so in a way that most respects dignity, then a determination can be made as to whether or not this "most appropriate" accommodation would result in undue hardship.

Where the most appropriate accommodation would result in undue hardship, education providers should consider "next best" alternatives, or interim measures while the most appropriate accommodation is being phased in or implemented at a later date.

If an accommodation exceeds an education provider's pre-determined special education budget, the education provider must look to its global budget, unless to do so would cause undue hardship.[47]

[46] It should be noted that both phasing in and the establishment of a reserve fund are to be considered only *after* the accommodation provider has demonstrated that the most appropriate accommodation could not be accomplished immediately.
[47] This is consistent with the Commission's approach in the employment context, where an employer or other entity cannot refuse to accommodate an employee with a disability because the accommodation would exhaust the funds that the employer had earmarked for employees with disabilities.

> **Example:** A publicly-funded school informs the parents of a student with a learning disability that they cannot provide their son with the services of a special needs assistant. The school principal states that he only has a certain amount of resources to fund accommodations to students with disabilities, and that he has already spent the money on the "most needy" students. The school board in this instance would be required to review its overall budget before supporting a conclusion that the accommodation could not be provided without causing undue hardship based on costs.

Costs of accommodation must be distributed as widely as possible within the institution responsible for accommodation so that no single school, or academic department is disproportionately burdened with the costs of accommodation. The appropriate basis for evaluating the costs is based on the budget of the institution as a whole, not the school, or academic department in which the student with the disability has requested an accommodation.

> **Example:** A college student requires the services of a sign language interpreter in his classes. The college has received several accommodation requests in the given academic year and has depleted its disability accommodation budget. Before denying the student's request, however, the college reviews its overall budget and finds a surplus in the budget of the business department which is then used to fund the student's request.

Larger organizations, in particular governments, may be in a better position to set an example or provide leadership in accommodating persons with disabilities. Accommodation costs will likely be more easily absorbed by larger organizations.

Health and Safety Requirements

Maintaining a safe learning environment for students, school staff and educators alike is an important objective. Health and safety issues will arise in various educational contexts and have the potential to affect individual students with disabilities, other students, educators, and school staff. Depending on the nature and degree of risk involved, it may be open to education providers to argue that accommodating a student with a disability would amount to an undue hardship.

Where a health and safety requirement creates a barrier for a student with a disability, the education provider should assess whether the requirement can be modified or waived. However, modifying or waiving health and safety requirements may create risks that have to be weighed against the student's right to equality.

In Practice: A teacher has reservations about allowing a student who uses a wheelchair to accompany the class on a field trip to a local zoo because of her belief that it will be too dangerous. The school principal decides to make further inquiries, including contacting the zoo's management, and determines that most of the facility is accessible, and that patrons who use wheelchairs and other motorized devices regularly visit the premises without incident. It is important to substantiate the actual degree of risk in question, rather than acting on inaccurate or stereotypical perceptions that may have little to do with a student's actual limitations.

An education provider may believe that accommodation that would result in the modification or waiver of a health or safety requirement could place the student at risk. The education provider is obliged to explain the potential risk to the student or his or her parent, where appropriate. The student, or his or her parent, will usually be in the best position to assess the risk. This applies only if the potential risk is to the student's health or safety alone. Where the risk that remains after considering alternatives and after accommodation is so significant as to outweigh the benefits of enhancing equality, it will be considered to be undue hardship.

Where a student is placed in an educational setting outside the regular classroom due to health and safety risks, the student is entitled to periodic reassessment to determine, in cases where the student's status changes, whether re-inclusion in the regular educational program is appropriate.

In Practice: A student with bi-polar disorder is unable to attend college due to uncontrollable and violent outbursts associated with his disability. After a period of medical treatment and with the aid of medication, he is able to manage his disability effectively. At this point, the college arranges to meet with and reassess the student's accommodation needs. The duty to accommodate is dynamic and ongoing and must be responsive to changes in the nature of a student's disability.

Where modification or waiver of a health or safety requirement is believed to result in a risk to the health or safety of others, the degree of risk must be evaluated. The education provider must consider other types of risks assumed within the institution. A potential risk created by accommodation should be assessed in light of those other more common sources of risk in the educational institution. The seriousness of the risk is to be judged based on taking suitable precautions to reduce it.

An education provider can determine whether modifying or waiving a health or safety requirement creates a significant risk by considering the following:

- Is the student (or his or her parents) willing to assume the risk in circumstances where the risk is solely to his or her own health or safety?[48]
- Would changing or waiving the requirement be reasonably likely to result in a serious risk to the health or safety of other students, educators or school staff?[49]
- What other types of risks are assumed within the institution or sector, and what types of risks are tolerated within society as a whole?

In evaluating the seriousness or significance of risk, the following factors may be considered:

- The nature of the risk: What could happen that would be harmful?
- The severity of the risk: How serious would the harm be if it occurred?
- The probability of the risk: How likely is it that the potential harm will actually occur? Is it a real risk, or merely hypothetical or speculative? Could it occur frequently?
- The scope of the risk: Who will be affected by the event if it occurs?

If the potential harm is minor and not very likely to occur, the risk should not be considered serious. If there is a risk to public safety, consideration will be given to the increased numbers of people potentially affected and the likelihood that the harmful event may occur.

Where a student with a disability engages in behaviour that impacts upon the well-being of others, it may be open to education providers to argue that to accommodate that student would cause undue hardship on the basis of health and safety concerns, specifically, that the accommodation would pose a risk to public safety. However, the seriousness of the risk will be evaluated only *after* accommodation has been provided and only after appropriate precautions have been taken to reduce the risk. It will be up to the education provider to provide objective and direct evidence of the risk. Suspicions or impressionistic beliefs about the degree of risk posed by a student, without supporting evidence, will not be sufficient.

A claim of undue hardship must stem from a genuine interest in maintaining a safe learning environment for all students, rather than as a punitive action. Even where a student poses a risk to him or herself or the safety of others, an education provider still has a duty to canvass other accommodation options, including separate services, where possible and appropriate.

[48] Risk is evaluated after all accommodations have been made to reduce it.

[49] *Ibid.*

Ultimately, an education provider must balance the rights of the student with a disability with the rights of others. There may be situations where a student poses a health and safety risk to him or herself or to others that would amount to an undue hardship, or an otherwise appropriate accommodation is impossible to implement in the particular circumstances. However, it is important that education providers not rush to such a conclusion. Further training for staff, or further supports for the student may resolve the issue. The accommodation process must be fully explored, to the point of undue hardship.

Roles and Responsibilities

Often, a number of parties might be involved in the accommodation process rendering it quite complex. Everyone should co-operatively engage in the process, share information, and avail themselves of potential accommodation solutions. It is in everyone's best interests that congenial and respectful relationships be maintained throughout the accommodation process.

The *student with a disability* (or his or her parent/guardian) has a responsibility to:

- advise the education provider of the need for accommodation related to a disability;
- make his or her needs known to the best of his or her ability, in order that the education provider may make the requested accommodation;
- answer questions or provide information regarding relevant restrictions or limitations, including information from health care professionals, where appropriate, and as needed;
- participate in discussions regarding possible accommodation solutions;
- co-operate with any experts whose assistance is required;
- fulfill agreed upon responsibilities, as set out in the accommodation plan;
- work with the education provider on an ongoing basis to manage the accommodation process; and,
- advise the education provider of difficulties they may be experiencing in accessing educational life, including problems with arranged accommodations.

As a party to the accommodation process, the *education provider* has a responsibility to:

- take steps to include students with disabilities in in-class and extra-curricular activities;
- advise students, or their parent(s)/guardian(s), of available accommodations and support services, and the process by which these resources may be accessed;
- accept a student's request for accommodation in good faith (even when the request does not use any specific formal language), unless there are legitimate reasons for acting otherwise;
- take an active role in ensuring that alternative approaches and possible accommodation solutions are investigated, and canvass various forms of possible accommodation and alternative solutions, as part of the duty to accommodate;
- obtain expert opinion or advice where needed, and bear the costs of any required disability-related information or assessment;
- maximize a student's right to privacy and confidentiality, including only sharing information regarding the student's disability with those directly involved in the accommodation process;
- limit requests for information to those reasonably related to the nature of the need or limitation, and only for the purpose of facilitating access to educational services;
- deal with accommodation requests in a timely manner;
- ensure that the school environment is welcoming and that all students treat one another with respect;
- take immediate remedial action in situations where bullying and harassment is or may be taking place; and,
- educate all faculty, staff and students about disability-related issues.

In the provision of educational services, the *education provider* has a responsibility to:

- review the accessibility of the educational institution as a whole, including all educational services;
- design and develop new or revised facilities, services, policies, processes, courses, programs or curricula inclusively, with the needs of persons with disabilities in mind; and
- ensure that the costs of accommodation are spread as widely as possible.

Unions, professional associations, and third party educational service providers are required to:

- take an active role as partners in the accommodation process;
- facilitate accommodation efforts; and
- support accommodation measures irrespective of collective agreements, unless to do so would create undue hardship.

The duty to accommodate a disability exists for needs that are known. Education providers are not, as a rule, expected to accommodate disabilities of which they are unaware. However, some students may be unable to identify or communicate their needs because of the nature of their disability. In such circumstances, education providers should attempt to assist a student who is perceived to have a disability, by offering assistance and accommodation. Once disability-related needs are known, the legal onus shifts to those with the duty to accommodate.

APPENDIX A

Anti-Harassment Policy

The following are suggested contents for an anti-harassment policy that is broad enough to cover all forms of harassment in the educational setting.

- A statement setting out the education provider's commitment to a fair and equitable learning environment free of discrimination and harassment and that discrimination/harassment will not be tolerated by the educational institution.
- A statement of rights and obligations, including:
  - student rights;
  - education provider, educator, and school staff obligations; and,
  - a statement indicating that no reprisals are permitted or will be taken against a student making a complaint.
- A list of the prohibited grounds of discrimination listed in the *Code*.
- The *Code* definitions of "harassment" and of "sexual harassment/solicitation".
- An explanation of the concept of a "poisoned environment" as a violation of the *Code*.[50]
- Description/examples of unacceptable behaviour, such as:
  - examples of harassment based on a ground listed in the *Code;*
  - refusal to evaluate fairly based on a ground listed in the *Code;* and
  - examples of what would constitute sexual harassment, *etc.*
- How internal complaints will be handled, including:
  - to whom the complaint should be made;
  - confidentiality; and
  - length of time for complaint to be investigated, *etc.*
- Disciplinary measures that will be applied if a claim of harassment or discrimination is proven.
- Remedies that will be available if the claim of harassment or discrimination is proven, such as:
  - an oral or written apology from the harasser/person who discriminated and educational institution;
  - recovery of lost class time, fair evaluation, or academic credit that was denied; and/or
  - compensation for injury to dignity.
- A statement reinforcing the right of students to go to the Commission at any time during the internal process, as well as an explanation of the 6-month time requirement in the *Code*.

[50] See Part 3.1.6 of the Commission's *Policy on Sexual Harassment and Inappropriate Gender-Related Comments and Conduct* available online at the Commission's website: www.ohrc.on.ca